



Office of the Attorney General
State of Texas

August 30, 1991

DAN MORALES
ATTORNEY GENERAL

Ms. Elaine H. Piper
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79999

OR91-396

Dear Ms. Piper:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 13035.

You have received a request for a copy of the El Paso Police Department's report regarding an incident on September 2, 1990, at 6509 Tarascas in El Paso. You maintain that the report, which deals with an individual's physical and mental condition, should be exempted from public disclosure because the report contains highly intimate or embarrassing facts about the individual such that its disclosure would be "highly objectionable to a person of ordinary sensibilities." Accordingly, you claim exemption from disclosure under section 3(a)(1) of the Texas Open Records Act.

Section 3(a)(1) of the Texas Open Records Act exempts:

information deemed confidential by law, either
Constitutional, statutory, or by judicial decision.

In order for information to be brought within the exception for information deemed confidential by a common-law right of privacy under section 3(a)(1), the information must meet both of two criteria:

(1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

See generally, Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d

688, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

Information relating to an individual's subjective emotional state, rather than information relating to conduct or events, may be deemed of a "highly intimate or embarrassing" nature. See Open Records Decision No. 539 (1990). More specifically, Open Records Decision No. 262 (1980) addressed the applicability of the common law privacy exemption under 3(a)(1) in situations where an individual's mental state is at issue. The opinion noted that:

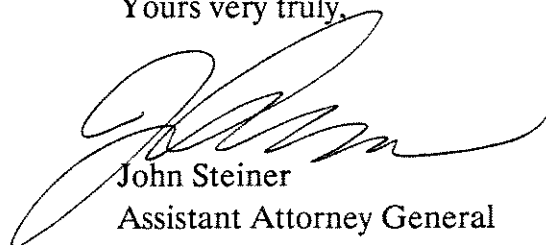
Information about a patient's injury or illness might raise . . . a claim [of privacy] if it relates, for example to a 'drug overdose,' 'acute alcohol intoxication,' 'obstetrical/gynecological' illness, 'convulsions/seizures,' or 'emotional/mental distress.' When the injury or illness falls within a protected category, we do not believe such information should be released.

Because the information contained in the police report reflects an individual's state of mental distress, we can determine that the information is of a "highly intimate or embarrassing" nature. Additionally, there seems to be no reason to believe that the information contained in the report is of "legitimate concern to the public."

We have considered the exception you claimed, specifically section 3(a)(1), and have reviewed the documents at issue. A previous determination of this office, Open Records Decision No. 262, resolves your request. Because the information contained in the requested report meets the two criteria for the common law privacy exemption as expressed in *Industrial Foundation*, the requested information may be withheld under section 3(a)(1).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-396.

Yours very truly,



John Steiner
Assistant Attorney General
Opinion Committee

Ms. Elaine H. Piper - Page 3 (OR91-396)

JS/GCK/lb

Ref: ID# 13035

cc: Ms. Claudia Bill
KTSM
801 N. Oregon
El Paso, Texas 79902